

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2006

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 3118  
Honorable Members  
Twenty-Third Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 3118, entitled "A Bill for an Act Relating to Corporations."

The purpose of this bill is to establish a task force to determine how to authorize the establishment of corporations structured to incorporate and protect the interests of employees and the public, and provide incentives for the creation of "responsible" companies that not only consider the public interest, but integrate the public interest into the structure and duties of the corporation.

This bill is objectionable because it assumes that shareholder and community interests are at odds. This presupposes that corporations are so driven by their bottom lines that they do not care about their employees, their customers, the environment, public health and safety, or their communities. The bill's preamble is especially objectionable because it contends that corporations are incentivized and, thus, move deliberately to cause harm to those community interests. This assumes that corporations ignore their greatest asset (i.e., their employees) and their target audience (i.e., their customers). Nothing could be further from reality.

In the real world, a business must be responsive to its employees and its customers, for without them, the business will fail. Corporations are comprised of our neighbors; they are active at community events; and they are some of the most

generous givers to charities in our community. To suggest that corporations would choose profit over the communities they operate in draws a false distinction and does a disservice to all of the hard working private-sector people who contribute to the betterment of our community.

Second, this bill is objectionable because it is inconsistent with other states' laws and, therefore, moves us in the wrong direction. It is flatly inconsistent with the recent progress that the State has made in becoming more business-friendly, and would move us back, once again, into the business-unfriendly column. My Administration has worked hard to make it easier for new businesses to come to Hawaii and increase competition in the marketplace. One way that we do this is to adopt model business laws and uniform legislation that have been adopted in other states across the nation. Adopting model laws means that businesses are familiar with the regulatory scheme and do not have to invest large amounts of capital to comply with regulatory laws that are unique to one location. As this bill is not based upon uniform legislation, it will not have the effect of enhancing Hawaii's business-friendly reputation. Instead, this bill will likely have the opposite effect, perpetuating the impression that Hawaii is anti-business.

Third, this bill is objectionable because it takes a myopic view of corporate governance. Rather than exploring other approaches to improving corporate governance and then determining which approach is appropriate for Hawaii, this bill refers to the Senate Draft as the basis for discussion and thereby rushes into an approach that will likely perpetuate Hawaii's anti-business reputation. If the intent were to improve corporate governance, it would have been more appropriate to charge the task force with

examining a variety of approaches and then recommending the most appropriate approach for Hawaii, rather than requiring that the task force begin by considering how to disempower corporate shareholders.

Finally, I am concerned with the bill's potential impact on tax revenues. Both the House and the original Senate version of this bill reflected what I believe to be the obvious fact that shifting control of corporations from shareholder investors to those representing community interests will not happen without financial incentives. As a result, those versions included tax breaks for those investing in "responsible" corporations. The Senate Committee on Ways and Means wisely removed the tax break provisions from the bill, but the task force will surely have to consider whether tax breaks are necessary to make this new corporate form feasible. Giving tax breaks to encourage the creation of alternative corporate forms is bad public policy. If those corporations cannot succeed in the marketplace, their good intentions notwithstanding, I am not willing to force taxpayers to subsidize an experiment of this sort.

It is unusual for me to object to the creation of a task force, as a task force usually reflects an honest attempt to thoroughly consider an issue and, as a result, incorporates concepts of intellectual exploration, openness, and transparency that I frequently champion. In this case, though, I believe that the deck is stacked in favor of a demonstrably flawed concept. If the task force was not directed to start from the Conference Draft version of the bill, and if the Conference Draft itself did not reflect such hostility toward local business, it would be less problematic. Hostility toward business, though, is the

STATEMENT OF OBJECTIONS  
HOUSE BILL NO. 3118  
Page 4

essence of the proposal, and for that reason I cannot support it.

For the foregoing reasons, I am returning House Bill  
No. 3118 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read 'L. Lingle', with a large, stylized loop at the end.

LINDA LINGLE  
Governor of Hawaii